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EXAMINER

WHALEN, MICHAEL F

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT DEAN KING, AYMAN M. EL-REFAIE, and
CHRISTOF MARTIN SIHLER

Appeal 2015-005673¹
Application 12/413,856²
Technology Center 3600

Before ANTON W. FETTING, PHILIP J. HOFFMANN, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1–10, 12–16, and 18–23. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Our decision references Appellants’ Specification (“Spec.,” filed Mar. 30, 2009), Appeal Brief (“Appeal Br.,” filed June 30, 2014), and Reply Brief (“Reply Br.,” filed May 12, 2015), as well as the Final Office Action (“Final Action,” mailed Jan. 29, 2014) and the Examiner’s Answer (“Answer,” mailed Sept. 30, 2014).

² According to Appellants, “[t]he real party in interest is General Electric Company.” Appeal Br. 2.

We REVERSE.

According to Appellants, the invention relates “to the control of disk brakes via magnetic field sensors and magnetically encoded disk brake rotors.” Spec. ¶ 1. Claims 1, 13, and 18 are the only independent claims on appeal. Appeal Br., Claims App. We reproduce claim 1, below, as illustrative of the claims on appeal.

1. A disk brake system comprising:

a magnetically encoded disk brake rotor having at least one magnetized section encoded therein, wherein the at least one magnetized section comprises a pair of oppositely polarized regions positioned adjacently to each other and forming a magnetic domain boundary therebetween;

a disk brake caliper comprising a plurality of disk brake pads attached thereto, the disk brake pads positioned adjacently to the disk brake rotor and configured to frictionally engage the disk brake rotor upon operation of the disk brake caliper;

a sensor assembly mounted proximately to the disk brake rotor and comprising at least one magnetic field sensor configured to detect the magnetic domain boundary;

a controller configured to receive signals from the at least one magnetic field sensor, wherein the controller is further configured to:

determine a brake rotor torque based on a change of the magnetic domain boundary; and

enable selective operation of the disk brake caliper based on the brake rotor torque.

Id.

REJECTIONS AND PRIOR ART

The Examiner rejects claims 1–8 and 13–16 under 35 U.S.C. § 103(a) as unpatentable over what the Examiner characterizes as Appellants’ “admitted prior art” and Brown (US 2004/0140166 A1, pub. July 22, 2004).

The Examiner rejects claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over the admitted prior art, Brown, and Howell (US 7,694,555 B2, iss. Apr. 13, 2010).

The Examiner rejects claim 12 under 35 U.S.C. § 103(a) as unpatentable over the admitted prior art, Brown, and Baumgartner (US 7,610,998 B2, iss. Nov. 3, 2009).

The Examiner rejects claims 18–21 under 35 U.S.C. § 103(a) as unpatentable over the admitted prior art.

The Examiner rejects claims 22 and 23 under 35 U.S.C. § 103(a) as unpatentable over the admitted prior art, Brown, and Takagi (JP 403074596 A, pub. Mar. 29, 1991).

ANALYSIS

Each of the Examiner’s rejections relies on a portion of Appellants’ Specification—paragraphs 23–25—that the Examiner characterizes as “admitted prior art.” *See, e.g.*, Final Action 2. It is true that “[a] statement by [Appellants] in the [S]pecification or made during prosecution identifying the work of another as ‘prior art’ is an admission which can be relied upon for both anticipation and obviousness determinations, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. [§] 102.” MPEP § 2129(I), citing *Riverwood Int’l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354 (Fed. Cir. 2003).

In this case, however, based on our review of the Specification as well as the Final Action and the Examiner's Answer, the Examiner's determination that Appellants made such an admission is not supported adequately. *See, e.g.*, Appeal Br. 5–8. More specifically, the cited portions of Appellants' Specification do not state that any work described therein is the work of another, for example. Further, the Examiner does not otherwise establish that the discussion in Appellants' Specification describes prior art under any section of 35 U.S.C. § 102. *See, e.g., id.* at 6–7. Thus, based on the foregoing, we do not sustain any of the rejections of claims 1–10, 12–16, and 18–23.

DECISION

We REVERSE the Examiner's obviousness rejections of claims 1–10, 12–16, and 18–23.

REVERSED